

1 THE HONORABLE RICARDO S. MARTINEZ
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 INDIAN HARBOR INSURANCE
12 COMPANY, a North Dakota corporation,

13 Plaintiff,

14 v.

15 TRANSFORM LLC, a Washington
16 Corporation; EQUILATERAL HOLDINGS
17 LLC, a Washington Corporation; EAST AHM
LLC, a Washington Corporation; and
HANSELL MITZEL LLC, a Washington
Corporation,

18 Defendants.

NO. C09-1120 RSM

DECLARATION OF JEFF HANSELL IN
SUPPORT OF EAST AHM LLC AND
HANSELL MITZEL LLC'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:
March 12, 2010

ORAL ARGUMENT REQUESTED

I, JEFF HANSELL, certify and declare as follows:

1. I am over the age of 18 years and am otherwise competent to make this declaration.

This declaration is made upon personal knowledge setting forth facts I believe to be true.

2. I am a member of East AHM Development, LLC, a Washington Limited Liability Company. I was also the project manager for the Trailhead Condominium construction project

1 described by the Plaintiff's Motion for Summary Judgment. As such, I have personal knowledge of
2 the progress of the construction of the project.

3 3. The contract between AHM and Transform at issue in the underlying lawsuit was
4 signed by both parties in June of 2008. The contract was a "labor only" contract under which AHM
5 purchased and provided all of the materials and items Transform used to assemble the Units. These
6 materials included literally everything: lumber, plywood, oriented strand board, hangers, structural
7 straps, nails, fasteners, adhesives, specialized structural beams, I-joists, plumbing pipe and
8 associated fittings, electrical wire, electrical boxes and panels, heat ducts, fireplaces, windows,
9 insulation, sheetrock, staples, screws, Tyvek, and so on.

10 4. It is my belief based on conversations with people affiliated with Transform that
11 Transform used at least two subcontractors to perform its obligations under the contract between
12 Transform and AHM. These subcontractors are Bellingham Heating and Riteway Plumbing. While
13 I am still attempting to figure out exactly what role these subcontractors played, it is my belief at this
14 time that some of the issues that emerged at Trailhead were either caused by, or involved damage to,
15 the work of these subcontractors.

16 5. While the contract set forth anticipated dates for delivery of the units, these dates
17 were not met. Based on my memory and my review of invoices from Bennett Trucking, the
18 company hired to deliver the units, the first two units were delivered on September 5, 2008 and the
19 last two were delivered on October 20, 2008. Attached as **Exhibit A** is a true and correct copy of
20 invoices submitted from Bennett Truck Transport, LLC. (Nos. AHM007 – 157).

21 6. Attached as **Exhibit B** is a true and correct copy of a complaint filed on February 25,
22 2010 in the Skagit County Superior Court of Washington.

1 7. I understand from discussions with my attorneys that the insurer for Transform is
2 contending that someone from AHM gave an adjuster two invoices—one dated July 28, 2008, the
3 other dated August 31, 2008—and that those invoices show AHM was aware of defects with the
4 Units. This is not true. The July 28, 2008 invoice deals with shower pans purchased for the units,
5 and the August 31 invoice simply represents ordinary and usual engineering services associated with
6 the units performed onsite at Transform.

7 8. When the units were finally delivered to the Trailhead site, AHM and its
8 subcontractors had to do extensive work both in and around the units to incorporate them into the
9 overall structure. Prior to delivery, the underground parking structure and post-tensioned structural
10 slab had already been built by AHM. When the Units arrived on-site, they were then placed into this
11 existing structure. As the Units were placed, several connection points were completed using
12 structural strapping and dimensional lumber pursuant to plans and specifications. Once all fifty-five
13 units were in place, the lobbies on all three stories, the two stair towers, the elevator shaft and entire
14 roof structure were built around the units assembled by Transform.

15 9. Beyond this work, the units themselves had to be “knitted” together in two separate
16 ways. First, the plumbing, electrical, heat, water etc. had to be connected between the individual
17 units themselves. Second, once individually connected, connections needed to be made to the
18 building’s overall distribution systems. For example, plumbing waste lines needed to be connected
19 to the main drains through the structural slab and into the garage, and power needed to be run from
20 the garage into each Unit and connected to each condominium Unit’s electrical panel.

21 10. In addition to the work performed to “knit” the Units into the overall condominium,
22 there was a significant amount of “finish work” that needed to be done to the Units themselves to
23 finalize the project. AHM had to finish wall surfaces, place underlayment on the floors, hang

1 cabinets and install granite counter tops so that sinks could be connected. Tile flooring was installed
2 with electric heat mats placed below the tile and on top of the underlayment. Doors, trim and
3 millwork were installed and stained in place. Electrical wiring was trimmed at the plugs and lights.
4 Heating systems and gas lines were connected, and appliances were installed.

5 11. Only after all of this work was performed and the project was nearing completion
6 could the Units finally be “energized”—meaning water, gas, etc. could be supplied to the units. As
7 the Units were energized, an unfortunate number of problems were discovered. Connections for
8 plumbing waste lines that were supposed to be in specific areas, and sloped at a specific grade, were
9 either not there or constructed incorrectly. Connections for plumbing supply lines, once pressurized
10 with water, sprang leaks in several areas. Several areas of water damage occurred to the existing
11 structure before it was discovered that these were not isolated leaks, but rather that they existed
12 throughout the nearly finished condominium. When the plumbers began air pressure testing the
13 plumbing lines, a significant number of leaks were discovered. When the electrical circuits were
14 connected, several “shorts” were also discovered. Similar problems were discovered with phone,
15 television and internet distribution systems, as well as fire sprinkler lines.

16 12. The net result of all of these issues was a major repair project. AHM was required to
17 rip out a huge amount of work that now surrounded the units on all sides in order to locate, assess
18 and repair the underlying damage and defective work. This included but was not limited to ripping
19 out cabinetry, flooring, walls, ceilings and a variety of other finish work, as well as tearing into
20 “common areas” of the condominiums such as lobbies, stair towers, etc. that also surrounded the
21 units assembled by Transform.

22 13. Attached as **Exhibit C** are true and correct copies of invoices from Stanton Plumbing,
23 Inc., Exterior Design and Apex Cabinets by Design, LLC. These invoices are a representative

1 sample (but in no way a complete record) of costs associated with both work done in and around the
2 units assembled by Transform, and the costs of destroying that same work as part of the repair
3 project. AHM plans to present its entire damage claim in this regard in the underlying lawsuit.

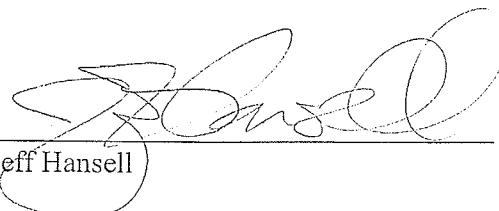
4 14. When AHM first became aware of the problems identified above, AHM notified
5 Transform, on several occasions, that the Units would need repairs according to the terms and
6 conditions of the contract. Upon the provision of such notice, Transform did send representatives to
7 the site to evaluate the issues that had arisen. The representatives from Transform agreed that there
8 were numerous defects in the workmanship of the Units that needed immediate attention.

9 15. After this initial site visit, Transform sent personnel to the site to perform repairs. On
10 multiple occasions, however, these repair visits were cancelled or rescheduled. Moreover, the repair
11 crew that did arrive on site was not prepared for the magnitude of the problems that existed. Cursory
12 attempts to make repairs on two occasions were initiated, but quickly abandoned by Transform staff
13 when it became clear that the complexity of the repairs that needed to be done were beyond
14 Transform's ability to complete.

15 16. AHM made several more attempts to force Transform to complete the repairs
16 requested as required under the warranty provision of the contract, the these efforts were resisted.
17 Ultimately, the Transform's senior management staff informed AHM that they would be unable to
18 complete any repairs, that they were breaching the warranty provision of the contract, and that AHM
19 was on its own to fix the defects and damage.

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3 DATED this 8th day of March, 2010, at Seattle, Washington.

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6 By 
7 Jeff Hansell
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DECLARATION OF JEFF HANSELL - 6

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2010, I electronically filed the foregoing Declaration of Jeff Hansell with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Tim E. Allen
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Seattle, WA 98101

DATED this 8th day of March, 2010.

STANISLAW ASHBAUGH, LLP

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